

Notice of Allowability

Application No.

10/059,098

Examiner

Peter J Vrettakos

Applicant(s)

EDWARDS ET AL.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Election dated 10-5-04.
2. ☒ The allowed claim(s) is/are 1-45.
3. ☒ The drawings filed on 26 April 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

Elected claims 1-45 are pending. (Election dated 10-5-04).

Non-elected (without traverse) claims 46-69 are cancelled.

Claims 1 and 23 are sole independent claims.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Don Hendricks on 5-12-05.

The application has been amended as follows:

- 1) Claim 1, line 18: "though" has been deleted.
- 2) Claim 1, line 18: "through" has been inserted after "probe".
- 3) Claim 23, line 16: "though" has been deleted.
- 4) Claim 23, line 16: "through" has been inserted after "probe".
- 5) Claim 11 now depends on claim 9.

The following is an examiner's statement of reasons for allowance: Independent claims 1 and 23 both include language toward a method/process of using a assembly comprising three concentrically designed balloons. The prior art is replete with catheters

Art Unit: 3739

(analogous to assembly) with multiple balloons. However, the balloons rest sequentially along the longitudinal axis of the catheter, or more infrequently two balloons are rest concentrically. (There is no motivation from a dual concentric balloon catheter to add another or third concentric balloon as seen in the Applicant's independent claims 1 and 23). Therefore, claims 1 and 23 are in condition for allowance, and consequently so are dependent claims 2-22, and 24-45.

The process and assembly in applicant's claims 1 and 23 are depicted best in figure 34. The first balloon is element 214 (outer balloon). The second balloon is element 12 (probe balloon). The third balloon is element 154 (deployment balloon). As seen, the balloons are concentrically designed and claimed as such in claims 1 and 23.

It is also noted that claims 1 and 23 are toward a process of use (a method). As a result, were a structurally similar catheter located in a prior art search, the use disclosed might not anticipate or make obvious the Applicant's use. In other words, finding a structurally similar catheter (if done) would only be a first step in determining the appropriateness of a rejection.

The Examiner has unearthed the following patents during the required search (the patents merely illustrate the points made above):

US 6685672
US 6616629
US 6540734
US 6517533
US 6409747
US 6293924
US 5792172
US 5788708
US 5562620

Each of the patents disclose catheters with multiple balloons that rest sequentially along the catheter's longitudinal axis or with two concentric balloons.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pete Vrettakos

Application/Control Number: 10/059,098

Page 5

Art Unit: 3739

May 12, 2005

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Roy D. Gibson

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PRIMARY EXAMINER